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April 4, 1988

The Honorable Peter Goudinoff  
Arizona State Representative  
State Capitol - House Wing  
Phoenix, Arizona 85007

Re: I88-046 (R88-007)

Dear Representative Goudinoff:

You have asked numerous questions as to how fire districts established pursuant to A.R.S. § 48-261 should implement various statutory provisions relating to fire fighters' pensions and benefits. These statutory provisions are Arizona Revised Statutes, Title 9, Chapter 8, Article 3 entitled "Fire Fighters' Relief and Pension Fund" (A.R.S. §§ 9-951 to -973) and Article 4 entitled "Alternate Pension and Benefit Plan" (A.R.S. § 9-981). Your questions will be addressed in the order presented.

1. Are the fire insurance premium tax monies only available for paying the cost of a pension plan? Is there any limitation for either article as to the provisions of the pension plan?

Fire insurance premium tax monies may be used only for the following purposes:

1. Inclusion in a permanent reserve fund, the income of which, but no part of the principal, shall be used to pay retirement benefits or relief. (A.R.S. § 9-951(D)).

2. Payments to beneficiaries. (A.R.S. § 9-955(C)).

3. Payments to the board of the fire district which procures the services of a private fire protection company pursuant to A.R.S. § 48-805(B)(7) of an amount each year not to exceed the cost of the private fire protection company's pension

plan but only to the extent monies are available in the fund.  
(A.R.S. § 9-955(C)).<sup>1/</sup>

4. Payment of necessary expenses of the board of trustees, except that no compensation is payable to members of the board for duties performed under this article. (A.R.S. § 9-957(A)).

5. Investment or reinvestment of funds which are not immediately requirement for the payment of pensions or benefits. (A.R.S. § 9-957(B)).

6. Grant temporary relief and assistance to any qualified member of a legally organized volunteer fire district or department, or to such member's surviving spouse or surviving dependents. (A.R.S. § 9-963).

7. Payment of monthly pensions to qualified individuals. (A.R.S. § 9-967).

8. Payment of any deficiency as determined by the board of trustees in the event compensation under the workers' compensation law is less than the benefits provided by Article 3. (A.R.S. § 9-969).

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<sup>1/</sup>The reference to A.R.S. § 48-805, subsection (B), paragraph 8 in A.R.S. § 9-955(C) is incorrect. A.R.S. § 9-955(C) should reference A.R.S. § 48-805, subsection (B), paragraph 7. A.R.S. § 48-805(B) was amended by Laws 1986 (2nd. Reg. Sess.) Ch. 390, § 7 by adding a new paragraph 6. The same legislation made a conforming amendment to A.R.S. § 9-955(C) which references A.R.S. § 48-805(B). The next year the legislature repealed A.R.S. § 48-805 as amended by Laws 1986 (2nd. Reg. Sess.) Ch. 390, § 7 and adopted a new version of A.R.S. § 48-805. Laws 1987 (1st Reg. Sess.) Ch. 299, §§ 5-6. No conforming amendment to A.R.S. § 9-955(C) was necessary since the Legislature merely changed the wording but not the paragraph numbers of A.R.S. § 48-805(B). The Legislature, however, apparently thinking a second conforming amendment to A.R.S. § 9-955(C) was necessary adopted Laws 1987 (1st Reg. Sess.) Ch. 357, § 1, par. 1 to correct what it thought was an incorrect internal reference in A.R.S. § 9-955(C). This later "correction" is wrong and should be repealed.

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9. Purchase of disability insurance for volunteer firemen. (A.R.S. § 9-973).

10. purchase of a private pension or benefit program for fire fighters not covered under Article 3 or under the public safety personnel retirement system ("PSPRS") and those fire fighters not covered under PSPRS who elect to be covered under the provisions of the alternative pension and benefit program. (A.R.S. § 9-981(A)).

Your question whether there is any limitation as to the provisions of either an Article 3 or Article 4 pension plan may be answered in the affirmative as any such provision cannot conflict with the laws of Arizona. A complete review and analysis of all such limitations is beyond the scope of this opinion.

2. May the fire insurance premium tax monies be spent to pay the cost of an alternative pension and benefit plan under A.R.S. § 9-981 established by a private fire protection company employed by a fire district which is not a pension plan? For example, could the fire insurance premium tax monies be used to fund a non-contributory profit sharing plan of the fire protection company? Could such monies be used to fund a money purchase pension plan, or must the funds be used solely to purchase a defined benefit plan?

The answer to all of your questions is no. See discussion at pages 1-3. Private fire protection companies have no authority to establish Article 4 plans under A.R.S. § 9-981. Whatever pension plans a private company may have are not controlled in any way by the provisions of Articles 3 or 4.

3. Can the fire insurance premium tax monies be used, under Article 4, to pay the cost of an Employee Stock Ownership Plan ("ESOP") or a Tax Reduction Act Stock Ownership Plan ("TRASOP") of a private fire protection company who renders services to a fire district?

No. See discussion at pages 1-3.

4. May the fire insurance premium tax monies, under Article 4, be used to provide other benefits other than a pension plan, profit sharing plan, ESOP or TRASOP? If so, what are the factors?

If your question refers to benefits established by private fire protection companies the answer is no for the reasons stated above. If your question refers to Article 4 plans established by fire districts the answer is yes. Article 4 includes terms such as an "alternative pension and benefit program" (A.R.S. § 9-981(A), (B) and (C)); a "private pension or benefit program" (A.R.S. § 9-981(B)); and, "pension and benefit programs" (A.R.S. § 9-981(D)) all of which indicate that the Article encompasses more than just pensions (emphasis added). Further evidence of the Legislature's intention that pension and benefits are authorized pursuant to Article 4 is the fact that A.R.S. § 9-981(A) provides that Article 4 is "[i]n lieu of pension and relief benefits provided for under the provisions of article 3 . . . ." (Emphasis added.) Article 3 in addition to pensions provides for benefits including temporary relief benefits (A.R.S. § 9-963) and disability benefits. (A.R.S. § 9-973).

The district board for those fire districts with a district board and the board of trustees of the fire fighters' relief and pension fund for those fire districts without a district board establish the terms, conditions, benefits, eligibility requirements and contribution rates for an Article 4 plan. A.R.S. § 9-981(C).

5. Are there any restrictions on whether or when a fire district may elect to establish a pension plan under Article 3 or Article 4?

A fire district may elect to establish an Article 4 plan only if it has "fire fighters not covered under the provisions of article 3 of this chapter or under the public safety personnel retirement system." A.R.S. § 9-981(A). If a fire district has fire fighters who are covered under Article 3, but not under the PSPRS, it must have an Article 3 plan unless the district also qualifies for an Article 4 plan and all the employees who qualify under Article 3 elect to join the Article 4 plan. A.R.S. §§ 9-951 to -973; A.R.S. § 9-981(B).

6. Does the phrase "for fire fighters not covered under provisions of article 3 . . . ." in A.R.S. § 9-981(A) enable a fire district to establish a pension plan under Article 4 even though it could have established such a plan under Article 3? As a corollary, is the application of Article 4 limited to only those situations where a fire district could not cover certain fire

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fighters under a pension plan and only in this situation could the fire district then use the provisions of Article 4 to establish such a plan?

See discussion at page 4.

7. What provisions in Article 3 are incorporated into Article 4? For example, if a fire district pursuant to A.R.S. § 9-981(C) properly establishes a pension plan must is also:

a. Establish a board of trustees pursuant to A.R.S. § 9-954?

Yes. The only source of monies with which to purchase an Article 4 Plan is the fire fighters' relief and pension fund ("fund") established by A.R.S. § 9-951. Under A.R.S. § 9-954(A), only the board of trustees is authorized to disburse monies from the fund. Also, under A.R.S. § 9-981(C)(3), the board of trustees establishes the terms, conditions, benefits, eligibility requirements and contribution rates of an Article 4 plan for a fire district without a governing board, i.e. for a fire district governed by an elected chief and secretary-treasurer.

b. Require an annual audit pursuant to A.R.S. § 9-956(A)?

Yes. The audit required under A.R.S. § 9-956(A) is of the fund, not of the pension plan itself. And audit also is necessary for the fire district to be eligible to receive its share of fire insurance premium tax monies. See A.R.S. § 9-956(D).

c. Report to the State Fire Marshal's office pursuant to A.R.S. § 9-956(B)?

Yes. The report required under A.R.S. § 9-956(B) is of the "condition of the fund and the receipts and disbursements." "Disbursements" from the fund in the case of an Article 4 plan would include the amounts paid for the purchase of the private pension or benefit program. "[A] complete list of its beneficiaries" for an Article 4 plan would be those beneficiaries covered by the private pension or benefit program paid for by the fund. "[T]he amounts paid" for an Article 4 plan would be the amounts paid to those beneficiaries covered by the private pension or benefit program paid for by the fund.

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d. Cause the investments to be restricted to the type specified in A.R.S. § 9-957(B)?

The investment restrictions specified in A.R.S. § 9-957(B) do not apply to Article 4 plans. The investment authority provided for in A.R.S. § 9-957(B) applies only to Article 3 plans. That provision provides that "[f]unds which are not immediately required for the payment of pensions or benefits under this article [Article 3] may be invested or reinvested . . . ." (Emphasis added.) Under Article 4 the fund is available to purchase a private pension or benefit program. A.R.S. § 9-981(B).

8. Once a fire district establishes a pension plan pursuant to A.R.S. § 9-981(C) what is the procedure to establish a claim for the portion of the fire insurance premium tax monies? Is this procedure any different if the fire district under this section adopts the pension plan of a private fire protection company's employees? Who initiates the claim procedure? What are the time requirements in order to share at the earliest possible time in the fire insurance premium tax proceeds?

The procedure to be employed by a fire district to establish a claim for its portion of fire insurance premium tax monies is established by A.R.S. § 9-956 and applies whether the district has (or intends to establish) an Article 3 plan, an Article 4 plan, or both, or whether the district merely contracts with a private fire company. The question wrongly implies that, in the case of a contract with a private fire company, the district may establish a Article 4 plan for employees of the private company. This is incorrect. Article 4 plans apply only to district firefighters. Whatever pension plans a private fire protection company may have are not controlled in any way by the provisions of Articles 3 or 4.

Fire districts which procure a private fire protection company may obtain fire insurance premium tax monies from the board of trustees of the fund which the district may use if it desires to offset part of the cost of the contract for fire protection services. A.R.S. § 9-955(C).

9. Assuming the answer to questions 3b above is in the affirmative, is the audit still required where a number of fire districts have employed a private fire protection company which has established one pension plan covering (1) participants who

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render services only to the particular fire district, (2) other participants rendering services to other fire districts throughout the state, (3) other participants not rendering services to any fire district, and (4) other participants from other states? Must the plan which covers subsidiaries in other states also be audited?

Neither Article 3 or Article 4 require an audit of a private fire protection company's pension plan. An audit of the fund pursuant to A.R.S. § 9-956, however, does require a report on all disbursements including those made by a board of trustees to a fire district board procuring a private fire protection company and such disbursements cannot exceed the cost of the private fire protection company's pension plan. A.R.S. § 9-955(C). The board of trustees, therefore, by audit or otherwise, would need to determine the costs incurred by the private fire protection company to provide a pension plan for the company's fire fighting personnel dedicated to the performance of the district fire protection contract.

10. Is there any requirement as to the type of opinion which must be received from the certified public accountant upon completion of the audit? Can it be a qualified or adverse opinion and still meet the requirements of an audit?

The requirement in A.R.S. § 9-956(A) that the audit be made by a certified public accountant was removed by Laws 1983 (1st. Reg. Sess.) Ch. 270. There is no legislative specification as to the type of opinion which must be received.

11. What is the procedure for establishing a board of trustees pursuant to A.R.S. § 9-954(A)?

A district administered by a district board (A.R.S. § 48-803) has the following board of trustees of its fire fighters' relief and pension fund: (1) one member from the district board; (2) the fire chief; (3) four members elected from the fire district; and, (4) one lay member appointed by the district. The district board would select one of its members to serve and would appoint the lay member while the fire chief would serve ex officio. A.R.S. § 9-954(A) distinguishes between a "lay member appointed by the . . . district" and the "four members elected . . . from the fire district." The word "lay" in this context means "not of or from a particular profession." Webster's Third New International Dictionary at 1281 (1976). We therefore conclude that the lay member would not be a fire fighter. The

four members elected from the fire district would be fire fighters elected by all of the fire fighters in the district. This interpretation is consistent with A.R.S. § 9-954(B) which provides for the "fire department of . . . each district shall elect by ballot from its membership four members of the board of trustees, or number of members as, when added to the incumbent members thereof, will constitute four members in addition to the chief."

The district board would call for the election of the four fire fighter members and would provide reasonable notice to the fire fighters of the election. The cost of the election would be paid by the district.

A district administered by an elected chief and secretary treasurer (A.R.S. § 48-804) has the following board of trustees of its fire fighters' relief and pension fund: (1) the elected chief of the district; (2) the elected secretary-treasurer of the district; (3) four members elected from the fire district; (4) one lay member appointed by the district. The chief and secretary-treasurer serve ex officio and would appoint the lay member. The four members of the district would be elected in the same manner as in a district administered by a district board except that the elected fire chief and secretary-treasurer would call for the election and would provide notice of the election.

Districts which procure the services of a private fire company and which have no fire fighters of their own, pose a special problem. Such districts literally cannot meet all the requirements of A.R.S. § 9-954, because they have no "members" from whom to elect the four trustees contemplated by the statute. Legislation is necessary to correct this ambiguity. In such a district then the board of trustees would be comprised of all the statutory members except the four elected fire fighter members from the district because none exist.

12. Under A.R.S. § 9-954(A), four members must be elected from the fire district. Who calls for the election, what type of notice must be given concerning the election, who pays for the cost of the election and who is eligible to vote for the election of the four members under this section?

See discussion at pages 7-8.



13. A.R.S. § 9-954(A) provides for "Four members elected . . . from the fire district." What does the phrase "from the fire district" mean? Does it mean only persons owning real estate may be eligible to vote or to be elected? May a person who does not have a home within the fire district, but owns and operates either a sole proprietorship or a corporation having its principal office within the boundaries of the fire district be elected?

See discussion at pages 7-8.

14. What other criteria should be used to meet the requirements of electing members from the fire district?

See discussion at pages 7-8.

15. Would your answer to the above questions 13 and 14 be different if the fire district had only the members on the fire district board and one part-time employee with no fire fighters because the fire district had elected to employ a private fire protection company which itself employed the fire fighters?

See discussion at pages 7-8.

16. What is the total number required by A.R.S. § 9-954(A) and (B) to be on the board of trustees? Is the number cumulative between paragraphs (A) and (B) or does paragraph (B) add only additional requirements to paragraph (A) but not change the total number of the board of trustees?

The requirements of A.R.S. § 9-954(B) do not change the number of trustees established by A.R.S. § 9-954(A).

17. A.R.S. § 9-954(B) appears to establish staggered terms for membership on the board of trustees. Is this correct? How are the terms established initially for each member? How do you replace a member who has not completed his turn and either died or resigned? How do you remove a member for cause or without cause?

A.R.S. § 9-954(B) establishes staggered terms for the four fire fighter members of the board of trustees and contemplates that biennially two members shall be elected for terms of four years. For the first election then two members would serve only two year terms. A district establishing a board of trustees for the first time could designate certain board of

trustee seats as two year seats or four year seats. Alternatively, the decision of determining which seats would be only for two years could be left up to the newly constituted board of trustees. Either method represents a reasonable application of the statute which is silent on this point.

The Legislature has not given the board of trustees the power to fill board vacancies or to remove a board member.<sup>2/</sup> A person holding a board position because of his office would be replaced by his successor in office. An election would be necessary to replace any member elected to the board and a new appointment by the appointing authority would be necessary to fill a board position held by nature of appointment.

18. Who has the authority to call the first meeting of the board of trustees? Keep in mind the president has not been elected at this point in time. What type of notice and how far in advance of the meeting must it be given? May a waiver of notice signed before, at, or after the meeting substitute for the notice? Who pays for complying with the notice requirement?

The district board for those districts administered by a district board or the fire chief for those districts administered by an elected chief appropriately could call the first meeting of the board of trustees and provide reasonable notice to the board members and public of the meeting consistent with Arizona's Open Meeting Law. See A.R.S. §§ 38-431 to -431.09. The cost for providing notice for the first meeting would be borne by the district. Subsequent expenses of the board in providing notice of board meetings would be borne by the board itself using the monies available in the fund which are the only monies available to it. See A.R.S. § 9-957(A).

19. What constitutes a quorum for the board of trustees?

A.R.S. § 1-216(B) provides that "[a] majority of a board or commission shall constitute a quorum."

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<sup>2/</sup> If a board of trustees member was considered a district officer their removal from office would be governed by A.R.S. § 38-341.

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20. Who establishes the date certain of the first annual meeting?

A.R.S. § 9-955(B) provides in part that "[t]he board [of trustees] shall meet annually . . . ." We construe this provision to mean that the board must meet at least once each year. The initial meeting of the board, even if called by the fire district or fire chief/secretary - treasurer in our opinion would satisfy the requirement. (See discussion at page 10.)

21. Does the board of trustees have the authority to establish rules of operation not inconsistent with the statute similar to by-laws in a corporation?

Although the statutes are silent on this issue, we think that the board of trustees has implied authority to establish rules of operation not inconsistent with their statutory authority and duties.

22. Where a fire district procures the services of a private fire protection company which has a pension or profit sharing plan, must the board of trustees comply with the first sentence of A.R.S. § 9-955(C)? Keep in mind the information is not readily available from the payroll records of the private fire protection company.

No. Whatever pension plans a private fire protection company may have are not controlled in any way by the provisions of Articles 3 or 4.

23. The last sentence of A.R.S. § 9-952 provides that a warrant to be issued by the state treasurer is to be identified for deposit in the fire fighters' relief and pension fund. Is the board of trustees, as provided in the second sentence of paragraph (C) of A.R.S. § 9-955, the only body having the authority to distribute or to disburse these funds? Who has the authority if no pension board was established under A.R.S. § 9-981?

Only the board of trustees of the fund has authority to disburse monies from the fund. A.R.S. § 9-954(A). The premise of the last portion of your question is incorrect: the board of trustees is not "established under A.R.S. § 9-981."

24. What does the word "cost" in the second sentence of A.R.S. § 9-955 mean? Is it the actuarial cost determined to provide the projected benefit? How do you determine the cost where a fire district procures the services of a private fire protection company having one plan covering a number of fire fighters who render services to a number of different fire districts both within and without the State of Arizona. May the actuarial cost, or other cost, of the one pension plan established by a private fire protection company wherein participants render services to a number of different fire districts both within and without the state be allocated to a particular district based on the ratio of that part of the fire district's contract amount with the private fire protection company compared to the contract amounts of all fire districts both within and without the state? Must the cost be all based on the number of fire fighters employed for the benefit of a particular fire district compared to the private fire protection company's total number of fire fighters both within and without the state? Must the allocation of costs of a pension plan consider the age and number of fire fighters employed by a private fire protection company which renders services to a fire district?

The word "cost" in A.R.S. § 9-955(C) is not defined in the statute where a word is undefined it is given its ordinary, common meaning unless it appears from the context or otherwise that a different meaning is intended. State v. Wise, 137 Ariz. 468, 671 P.2d 909 (1983).<sup>1/</sup> Here, however, the word "cost" as used in the context of the term "cost of the . . . pension plan" has a technical meaning. A.R.S. § 1-213.

The determination as to which costs of the private fire protection company may be included in the cost of providing the pension plan is one which should be made using generally accepted accounting principles. See Financial Accounting Standards Board ("FASB"), Accounting Standards, Current Text, General Standards as of June 1, 1987 at FASB Statement 87 and 88 (1987).

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<sup>1/</sup>The common meaning of cost is "the amount or equivalent paid or given or changed or engaged to be paid or given for anything bought or taken in barter or for service rendered." Webster's Third New International Dictionary at 515 (1976).

25. Assuming that whatever the definition of costs is determined to be and that amount is less than the fire insurance premium tax allocated to the particular fire district, what may or must be done with the excess? For what period of time may the excess be accumulated? Keep in mind that the actuarial cost will vary from year to year depending on, for example, the type of pension plan, the age of the fire fighters, and the benefits to be paid. Also keep in mind the limitation on cost contained in the second sentence of paragraph (C) of A.R.S. § 9-955.

Excess amounts would accumulate in the fund. There is no limit in the statute as to the period of time the excess amounts may be accumulated.

26. Where a fire district employs a private fire protection company having a pension plan, in order to comply with the fourth sentence of paragraph (C) of A.R.S. § 9-955, must it maintain a list of participants in the private fire protection company's pension plan? Keep in mind that participants may be rendering service to fire districts both within and without the State of Arizona or not even rendering services in a legally organized fire district but may be rendering services to foreign states' political subdivisions.

No. The fourth sentence in A.R.S. § 9-955(C) requires that the board of trustees transmit to the county treasurer "a written list of all persons entitled to benefits from the fund . . . ." The employees of a private fire company are not "entitled to benefits from the fund."

27. Does this provision apply to a plan established pursuant to A.R.S. § 9-981?

Yes. The provision is applicable regardless of whether the fire district proceeds under Article 3 or Article 4.

28. What period of time is the audit to cover? For example, a calendar year, a year ending June 30, or some other fiscal year?

A.R.S. § 9-956 requires an annual audit and report of the fund. We think the fiscal year to be used is the normal one for government in Arizona, July 1 through June 30, although the statutes do not specifically provide. It seems reasonable that the Legislature contemplated that the fiscal year for the audit

and report of the board of trustees would be the same as the fiscal year of the district itself. Two legislative enactments in 1986 strongly imply that the fiscal year for a district is July 1 through June 30. Laws 1986 (2nd. Reg. Sess.) Ch. 290 requires various special taxing districts, including fire districts, to file annual reports "for the preceding fiscal year" on a form prescribed by the Auditor General or a financial statement certified by an independent certified public accountant and provides that the required reports "shall be submitted for all fiscal years ending on or after June 30, 1987."<sup>4</sup> Laws 1986 (2nd. Reg. Sess.) Chapter 291, relating to district budgets and the fire district assistance tax, provides that the act "is effective and applies to fiscal years beginning from and after June 30, 1987."

29. As a condition precedent to sharing in the fire insurance premium tax monies, must there first be an audit? If so, how can you have an audit for the first year before a fire district shares in the fire insurance premium tax monies? Who has the authority to pay for such an audit assuming one can be obtained?

An "annual audit and report of the fund" is a condition precedent for a district to receive fire insurance premium tax monies. A.R.S. § 9-956(D). The audit and report can be paid for from the fund by the board of trustees which has authority to provide for payment of its necessary expenses. A.R.S. § 9-957(A).

If a district hires a private fire company and never itself has employed fire fighters prior to its first application under A.R.S. §§ 9-951 and 9-956 it would have no existing fund, because it never would have received employer or employee contributions, or fire insurance premium tax monies. Obviously, an audit and report in such a situation would not include a true audit of the fund since it does not yet exist. The report of the fund, however, goes beyond an audit and should, for example, inform the fire marshal of the existence of the new board (which controls the fund), the number of expected beneficiaries and the like. The report also should state that there is no existing fund and, accordingly, nothing to audit.

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<sup>4</sup>We are advised by the Auditor General that its form contemplates a July 1 through June 30 fiscal year and that all fire districts apparently use this fiscal year.

30. Must the pension board of trustees comply with A.R.S. § 35-103(A)? Does the pension board of trustees who fail to comply with A.R.S. § 35-103(A) but complies with A.R.S. § 9-956(B) and (C) lose the right to share in the fire insurance premium tax monies?

The board of trustees need not comply with A.R.S. § 35-103(A) which applies only to state or county officers, boards, commissions and agencies. Failure of the board of trustees to comply with A.R.S. § 35-103(A) would not result in a loss of the right to share in the fire insurance premium tax distribution.

31. Does the withholding of the fire insurance premium tax monies under A.R.S. § 35-103(C) or the "not eligible to receive" under A.R.S. § 9-956(D) result in a temporary suspension until compliance with these sections had occurred or is it a forfeiture of the fire insurance premium tax monies otherwise available for a particular year?

There is no "withholding of fire insurance premium tax monies" under A.R.S. § 35-103(C). This subsection does not apply to fire districts or to boards of trustees.

A.R.S. § 9-952 requires the state treasurer to:

distribute the fire insurance premium tax to  
. . . legally organized fire districts in  
proportion to the full cash value of the real  
property and improvements in each . . .  
legally organized fire district which procures  
the services of a private fire company and in  
each area served by a . . . legally organized  
fire district.

A.R.S. § 9-952. The state treasurer, however, pursuant to A.R.S. § 9-956(D) only has authority to distribute the fire insurance premium tax to those districts eligible to receive its share of the fire insurance premium tax monies. See A.R.S. § 35-190; see also A.R.S. § 35-196. The portion of the fire insurance premium tax monies which would have been distributed to an ineligible district had it been eligible is distributed to the remaining eligible cities, towns and districts. See A.R.S. § 9-951(B) which provides that "[t]he total amount of the tax proceeds shall then be prorated among the several incorporated cities and towns and

legally organized fire districts . . . ." (Emphasis added.) In other words, the ineligible district loses one year's distribution of the fire insurance premium tax monies.

32. Must the pension board of trustees of a particular fire district which procures the services of a private fire protection company having a pension plan, require an audit of the plan trust which covers subsidiaries and participants within and without the state of Arizona? Is there any relief from A.R.S. § 35-103 of a pension plan of a private fire protection company whose plan year is different than required either under that section or under A.R.S. § 9-956? The cost of two audits at overlapping periods of time could be prohibitive.

Audits of a pension plan of a private fire company are not required by A.R.S. § 9-956 which relates to audits of the fund or by A.R.S. § 35-103 which relates to state or county officers, boards, commissions and agencies.

33. Do the provisions of A.R.S. § 9-957 apply to a plan established under A.R.S. § 9-981?

No. See discussion at pages 5-6.

34. Do the requirements of A.R.S. § 9-957(B) apply to a board of trustees whose fire district procures the services of a private fire company which has one pension plan covering participants within the fire district, without the fire district and without the state of Arizona?

No. Whatever pension plans a private fire protection company may have are not controlled in any way by the provisions of Articles 3 or 4.

35. Assuming the facts in the above question, how does the board of trustees comply with the provision of A.R.S. § 9-957(C)?

Given the answer above the question is inapplicable.

36. Must a fire district initiate action with the State Fire Marshal's Office for it to be included in its certification to the state treasurer that the fire district is a legally organized fire district which procures the services of a private fire company and the area serviced by the legal organized fire



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district? If so, what and when must the fire district information be filed?

A.R.S. § 9-953 places the responsibility on the state fire marshal to certify the existence of fire districts organized under title 48. The statute is silent as to how the state fire marshal should accomplish this task. A new fire district or a fire district without previous contacts with the state fire marshal reasonably would want to inform the state fire marshal of their formation and existence.

37. A.R.S. § 9-951(B) uses the term "previous year" in the first sentence. What does this term mean? For example, a prior calendar year, prior year ending June 30, or some other fiscal year?

The term "previous year" in the first sentence of A.R.S. § 9-951(B) refers to the calendar year for which the fire insurance premium taxes were paid. The tax is imposed by A.R.S. § 20-224, which requires insurers by March 1 to report to the director of insurance showing premium income in the "preceding calendar year."

38. Must a board of trustees be established or must there be action by a fire district board under A.R.S. § 9-981 before certification by the State Fire Marshal's Office can take place?

The existence of a board of trustees of a district fire fighters' relief and pension fund is not a prerequisite to certification of the existence of a legally organized fire district. However, for that district to obtain fire insurance premium tax monies a board of trustees must exist as it is the entity which prepares the annual audit and report which must be filed with the state fire marshal before make the district is eligible to receive the funds. A.R.S. § 9-956.

Sincerely,



BOB CORBIN  
Attorney General

BC:CW:CP:lbg